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March 26, 2009

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Dear Angela:

Further to your request of February 13, 2009, regarding the concerns of technology transfer practices at DOE Labs; our statements pertain to the User Agreement No. LB08004825 for Dr. Brian Mark at the University of Manitoba (UM) in May 2008.

Under Question 1: Improvements to Existing Transactions, most of the initial changes we requested were dealt with accordingly except for Article VI.

Article VI – stated “The User agrees to indemnify and hold harmless the Government, the Department, The Contractor and persons acting on their behalf from all liability, including costs and expenses incurred to any person, including the User, for injury to or death of persons or other living things or injury to or destruction of property arising out of the performance of the Agreement by the Government, the Department, the Contractor, or persons acting on their behalf, or arising out of the use of the services performed, materials supplied, or information given hereunder by any person including the User and not directly resulting from the fault or negligence of the Government, the Department, the Contractor, or persons acting on their behalf.

The University of Manitoba can not indemnify anything related to the performance of the agreement “by the Government, the Department, the Contractor...”. The UM can only agree to indemnify for actions of the University, its officers, directors or employees related to the performance of the Agreement. We suggested, in the fourth line, to remove the words “by the Government, the Department, the Contractor, or persons acting on their behalf...” and replacing them with the words “by the User, its officers, directors or employees...”

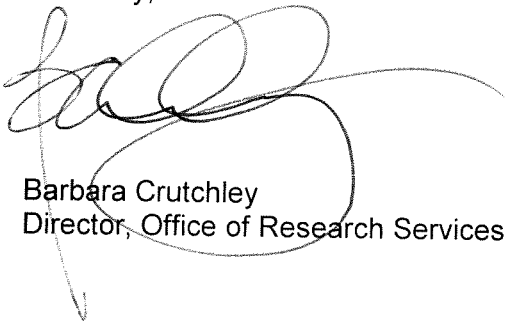
You stated that because the ALS is a US Government facility under the Department of Energy managed by LBNL, as such, the Department of Energy requires this indemnification language to remain "as is". No changes were allowed to Article VI.

Under Questions 2: Best Practices, 3: Competitiveness, 4: IP Rights and 5: Negotiable or Non-Negotiable Agreements, the University has no additional comment.

Under Question 6: Other, there was no provision in the agreement regarding publication, although you stated that it was implied in Article IX, no specific publication clause was ever added. We would prefer that this right be specifically acknowledged.

Thank you very much for the opportunity to provide input from our experience. It is much appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read 'Barbara Crutchley', with a large, stylized loop at the end.

Barbara Crutchley
Director, Office of Research Services